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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**JOINT SUBMISSION IN RESPONSE TO
DKT. 320 RE: SEALING PORTIONS OF
NOVEMBER 4, 2021 HEARING
TRANSCRIPT**

Referral: Hon. Susan van Keulen, USMJ

1 November 19, 2021

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen
4 San Jose Courthouse
5 Courtroom 6 - 4th Floor
6 280 South 1st Street
7 San Jose, CA 95113

8 Re: Joint Submission in Response to Dkt. 320 re: Sealing Portions of November 4,
9 2021 Hearing Transcript
10 *Brown v. Google LLC*, Case No. 5:20-cv-03664-LHK-SVK (N.D. Cal.)

11 Dear Magistrate Judge van Keulen:

12 Pursuant to Your Honor's November 3, 2021 Order to Seal the Courtroom (Dkt. 320),
13 Plaintiffs and Google LLC ("Google") jointly submit this statement regarding sealing portions of the
14 November 4, 2021 hearing transcript.
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Google respectfully seeks to seal the following portions of the November 4, 2021 Hearing Transcript (“Transcript”), which contain Google’s confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations that Google does not share publicly, including details related to Google’s internal systems, practices, projects, identifiers, cookies, the various types of logs maintained by Google, information contained in those logs, as well as Google’s internal communications and practices with regard to Incognito and their proprietary functions, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. This Court has previously sealed the same or substantively similar information, including in Dkt. Nos. 143, 152, 160, 172, 174, 183, 190, 197, 226, 238, 240, 276, 285, 286, 306, 320, 330. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Transcript:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
November 4, 2021 Hearing Transcript	Portions Highlighted in Yellow at 9:13; 11:9-10; 11:14; 12:7; 12:19; 13:15-17; 13:19-20; 13:24; 14:4; 14:7-9; 14:14; 14:19; 14:21-22; 15:22-25; 16:1-4; 16:12; 16:14; 16:18-24; 17:1-2; 17:4-5; 17:9-12; 17:16; 19:1; 20:3-5; 21:2; 23:19; 23:22-23; 27:2; 27:13; 28:13-15; 28:24-25; 29:1-4; 29:10-14; 31:18; 31:25; 32:3; 32:19-21; 33:5; 33:12; 33:21; 34:19; 34:22-25; 35:1-6; 35:18-22; 36:1; 36:8-9; 36:19-24; 37:4-7; 37:10; 37:15-16; 37:25; 38-1; 39:2-25; 40:13; 40:25; 41:1-9; 41:11; 41:14-15; 42:12; 42:14-15; 42:20-21; 42:23-25; 43:1; 43:3; 44:16-18; 44:22-25; 45:1-2; 46:4-16; 47:2; 47:6; 49:3-6; 50:6; 50:9-13; 51:9; 51:11-17	Google

The parties conferred on the proposed redactions to the Transcript. Plaintiffs take no position on the proposed redactions and they do not oppose Google’s motion to seal.

I. LEGAL STANDARD

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978)

(noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). The right to access is further diminished where, as here, a party seeks to prevent the disclosure of information discussed during a hearing on a non-dispositive discovery motion; rather than the more stringent “compelling reasons” standard, a party seeking to seal materials in these circumstances must make only a “particularized showing” of “good cause.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). A “strong presumption of access” does *not* apply to sealed discovery documents attached to non-dispositive motions; a “party seeking disclosure must present sufficiently compelling reasons why the sealed discovery document should be released.” *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). Sealing is appropriate when the information at issue constitutes “competitively sensitive information,” such as “confidential research, development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information”).

II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE” STANDARD AND SHOULD ALL BE SEALED

Although the materials that Google seeks to seal here easily meet the higher “compelling reasons” standard, the Court need only consider whether these materials meet the lower “good cause” standard. Courts have repeatedly found it appropriate to seal documents that contain “business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good cause to seal is shown when a party seeks to seal materials that “contain[] confidential information about the operation of [the party’s] products and that public disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v.*

1 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information
2 “is appropriately sealable under the ‘compelling reasons’ standard where that information could be
3 used to the company’s competitive disadvantage”) (citation omitted).

4 Here, the Transcript comprises confidential information regarding highly sensitive features of
5 Google’s internal systems and operations that Google does not share publicly. Specifically, this
6 information provides details related to Google’s internal systems, practices, projects, identifiers,
7 cookies, the various types of logs maintained by Google, information contained in those logs, as well
8 as Google’s internal communications and practices with regard to Incognito and their proprietary
9 functions, that Google maintains as confidential in the ordinary course of its business and is not
10 generally known to the public or Google’s competitors. Such information reveals Google’s internal
11 strategies, system designs, and business practices for operating and maintaining many of its important
12 services while complying with legal and privacy obligations.

13 Public disclosure of the above-listed information would harm Google’s competitive standing it
14 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
15 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone is
16 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-
17 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
18 sensitive business information related to Google’s processes and policies to ensure the integrity and
19 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
20 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
21 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
22 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
23 motion to seal as to “internal research results that disclose statistical coding that is not publically
24 available”).

25 Moreover, if publicly disclosed, malicious actors may use such information to seek to
26 compromise Google’s internal data structures and internal identifier systems. Google would be placed
27 at an increased risk of cyber security threats, and data related to browsing of users could similarly be
28 at risk. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013)

(sealing “material concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted” because if made public, it “could lead to a breach in the security of the Gmail system”). The security threat is an additional reason for this Court to seal the identified information. The information Google seeks to redact, Google’s internal systems, practices, projects, identifiers, cookies, the various types of logs maintained by Google, information contained in those logs, as well as Google’s internal communications and practices with regard to Incognito and their proprietary functions, is the minimal amount of information needed to protect its internal systems and operations from being exposed to not only its competitors but also to nefarious actors who may improperly seek access to and disrupt these systems and operations. The “good cause” rather than the “compelling reasons” standard should apply but under either standard, Google’s sealing request is warranted.

III. CONCLUSION

For the foregoing reasons, Google respectfully requests that the Court seal the identified portions of the Transcript.

Respectfully,

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ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Submission.
Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has
concurred in the filing of this document.

Dated: November 19, 2021

By /s/ Andrew H. Schapiro
Andrew H. Schapiro
Counsel on behalf of Google LLC